

ASSEMBLY BILL

No. 1294

Introduced by Assembly Member Grove

February 22, 2013

An act to amend Section 1742 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 1294, as introduced, Grove. Public works: civil wage and penalty assessments.

Existing law defines the term “public works” for purposes of requirements regarding the payment of prevailing wages, the regulation of working hours, and the securing of workers’ compensation for public works projects.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if, after an investigation, the commissioner determines there has been a willful violation of the laws regulating public works. An affected contractor or subcontractor may obtain a review of the civil wage and penalty assessment by requesting a hearing from the office of the Labor Commissioner, after which the director shall issue a written decision. Under existing law, the contractor or subcontractor has the burden of proving that the basis for the civil wage and penalty assessment is correct.

This bill would instead require the Labor Commissioner to prove that the basis for the civil wage and penalty assessment is correct.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1742 of the Labor Code is amended to read:

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If ~~no~~ a hearing is *not* requested within 60 days after service of the assessment, the assessment shall become final.

(b) (1) Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

~~The contractor or subcontractor~~

(2) *The Labor Commissioner* shall have the burden of proving that the basis for the civil wage and penalty assessment is ~~incorrect~~ *correct*. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

~~Within~~

(3) *Within* 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. Within 15 days of the issuance of the decision, the director may reconsider

1 or modify the decision to correct an error, except that a clerical
2 error may be corrected at any time.

3 ~~The~~

4 (4) *The* director shall adopt regulations setting forth procedures
5 for hearings under this subdivision.

6 (c) An affected contractor or subcontractor may obtain review
7 of the decision of the director by filing a petition for a writ of
8 mandate to the appropriate superior court pursuant to Section
9 1094.5 of the Code of Civil Procedure within 45 days after service
10 of the decision. If ~~no~~ a petition for writ of mandate is *not* filed
11 within 45 days after service of the decision, the order shall become
12 final. If it is claimed in a petition for writ of mandate that the
13 findings are not supported by the evidence, abuse of discretion is
14 established if the court determines that the findings are not
15 supported by substantial evidence in the light of the whole record.

16 (d) A certified copy of a final order may be filed by the Labor
17 Commissioner in the office of the clerk of the superior court in
18 any county ~~in which~~ *where* the affected contractor or subcontractor
19 has property or has or had a place of business. The clerk,
20 immediately upon the filing, shall enter judgment for the state
21 against the person assessed in the amount shown on the certified
22 order.

23 (e) A judgment entered pursuant to this section shall bear the
24 same rate of interest and shall have the same effect as other
25 judgments and shall be given the same preference allowed by law
26 on other judgments rendered for claims for taxes. The clerk shall
27 not charge for the service performed by him or her pursuant to this
28 section.

29 (f) An awarding body that has withheld funds in response to a
30 civil wage and penalty assessment under this chapter shall, upon
31 receipt of a certified copy of a final order that is no longer subject
32 to judicial review, promptly transmit the withheld funds, up to the
33 amount of the certified order, to the Labor Commissioner.

34 (g) This section shall provide the exclusive method for review
35 of a civil wage and penalty assessment by the Labor Commissioner
36 under this chapter or the decision of an awarding body to withhold
37 contract payments pursuant to Section 1771.5.